

The University of Chicago

LEGAL BASIS OF THE
PUBLIC SCHOOL SYSTEM IN TEXAS

A PART OF A DISSERTATION SUBMITTED TO THE
FACULTY OF THE DIVISION OF THE SOCIAL SCIENCES
IN CANDIDACY FOR THE DEGREE OF DOCTOR OF
PHILOSOPHY

DEPARTMENT OF EDUCATION
SEPTEMBER, 1945

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TERREL SPENCER

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CHAPTER I

MAJOR FINDINGS OF THE INVESTIGATION

To facilitate an understanding of the organization and treatment of the data in this investigation a general overview of the major findings is presented in this first chapter. Such a general overview presented first gives the reader an opportunity to interpret the detailed documented data with greater ease and to see a greater number of relationships in the various phases of the law. The generalizations and conclusions drawn in this chapter are all substantiated by the documented material in the chapters to follow. The organization of this chapter follows very much the same pattern as set for the remaining chapters; thus reference to the detailed discussion may be made without undue difficulty.

Organization of the State School System

Administrative Control.--The public schools of Texas are administered by a gubernatorially appointed nine-member state board, an elected state superintendent, elected five-member county boards, elected chief county school officers (county superintendent or county judge, acting as superintendent), and elected district boards of three to seven members. This organizational structure as it exists today is the product of about eighty years of legislation. In developing this organization the legislature was reluctant to establish a separate organization to administer the affairs of the schools. The practice of using civil officials

as school officers has been employed in the state, county, and certain district organizations. The personnel of the state organization, until about fifteen years ago, was composed of such state officials as the Governor, Attorney General, Treasurer, and Comptroller. The personnel of the country organization was, for many years, composed of the county judge and the commissioners' court. The latter was, and still is, the governing body for the county. Unlike the state organization, the transition to a separate organization in the counties is not yet complete. County school boards have replaced the commissioners' courts in all counties, but county judges remain as chief county school officers in about one-third of the counties. The legislature has made the election of county superintendents mandatory only in those counties having a scholastic population of three thousand or more. In less populated counties the election of such an officer is left to the initiative of the voters. The principle of using civil officers was applied for a while in the organization established in incorporated cities and towns assuming exclusive control of their schools. The laws at one time provided that the city council or board of aldermen of such cities should administer the affairs of the schools within the city. This law was later replaced by provisions for elected school boards, but the legislature did not dissolve organizations established under the original laws.

There has been a slight trend in the laws toward larger boards but there is no definite trend regarding terms of office. In the beginning the state board was composed of three members; now there are nine. Originally their terms of office were dependent on the number of terms for which they were elected to the civil offices; now their terms are restricted by the constitutional limit of six years. The number of members on the county school

board and the number on the common school board with a temporary exception, have not changed since their original creation. They are five and three respectively. The term of office for county board members has always been two years while that of common school boards has increased from one to three years. Independent district board members have increased in number from five to six, then, to seven and their original term of office of four years has been decreased to two years.

The qualifications for the office of district trustee are limited to being a qualified voter and property taxpayer in the district and being able to read and write, although it appears that some types of districts do not require the latter. A member of the county board of trustees must, in addition to being a qualified voter of his county and being able to read and write, be of good moral character, speak the English language understandingly, have a good education, and "be in sympathy with the schools." A county superintendent must have virtually the same qualifications and in addition thereto he must have executive ability and hold a first class teacher's certificate, which is the second highest certificate. There are no professional requirements of the state superintendent and the most significant requirement of a state board member is that he not be a professional educator. No state officer is permitted to have connections with any textbook publisher.

District board members are the only officials in the entire organization who do not receive some compensation for their services. A county board member receives \$3.00 per day, not to exceed \$36 per year. The county superintendent's salary is based on a schedule ranging from \$1600 to \$4800. State board members receive \$10 per day and expenses; and the state superintendent's

salary is set and appropriated at each session of the legislature.

Trend toward Greater State Control

In the development of the present educational system there has been an increasing amount of control vested in the state school authorities. The powers that have made this control possible have been gradually conferred upon the state school officials by the legislature as the system became more and more complex. The powers granted to the local boards during the first few decades were usually rather general grants of authority. As new legal provisions for local boards became necessary, the legislature began to be more specific in conferring powers and prescribing duties. The opposite seems to be true in conferring powers on the state officials. During the first few decades their duties were hardly more than routine. Later very broad powers were conferred, such as administering and interpreting the school laws, settling controversies, approving expenditure of funds, and formulating rules in the absence of law.

The powers and duties conferred on local boards during the first forty years have since been restricted either directly or indirectly by the legislature. Only one exception to this generalization can be found. It concerns the authority to formulate rules and regulations necessary to operate the school. This authority seems to have been left unmolested by the legislature since its original enactment, and has been modified by the courts only by the requirement of reasonableness. The selection of teachers illustrates how a power has been directly restricted by the legislature. Originally, local boards could select any teacher of desirable qualifications. Later they were permitted to select only teachers who held a valid certificate issued in

compliance with procedures prescribed by the legislature. Again, in the matter of constructing buildings, the legislature originally required that schools be conducted in "suitable houses." Subsequently, specifications regarding heating, ventilation, sanitation, and the like were prescribed. Similar modification has been made in such other powers as making contracts with teachers, letting contracts for the construction of school buildings, prescribing the subjects to be taught, and determining the length of the school term. In conferring on the state officers the broad powers mentioned, such as approving expenditures and making rules in the absence of law, the legislature indirectly restricted some of the powers of the local board. This indirect restriction by the legislature is again illustrated in the conferring of a few but broad powers on the county boards. When the number of school districts was few, the county officials had to perform more or less routine duties; but as the number of districts increased, the legislature found it necessary to enlarge the powers of the county officials. In conferring on these officials the authority to approve contracts with teachers, to change district lines, to consolidate districts, and to create high school districts, the powers of boards in common and small independent districts were necessarily restricted.

In all instances the authority of the county officials extends over all common school districts. In most instances their authority is extended to include independent districts having a population of fewer than 150 scholastics; however, in other instances independent districts having a scholastic population of less than 500 are under their jurisdiction. There are also a few duties performed by county officials that involve all districts. However, the extent of control over independent districts having

more than 150 scholastics is quite meager.

School Districts

District boards.--School districts are subdivisions of the state provided for by organic law to facilitate the organization and administration of the state's educational program. Each district is administered by a board whose powers are expressly conferred or necessarily implied by acts of the legislature. As a corporate body a school board may sue and be sued and may employ an attorney to represent it. In short, it may perform such acts within the scope of the law as it considers to the best interests of the schools. Ordinarily, school board members are held personally liable only for acts arising from corrupt motives. Members of school boards may be held personally liable for fraudulent representations and misappropriations of funds.

A school board member may vacate his office by voluntary resignation, changing place of residence to another district, removal by the judiciary, or acquiring an incompatible office.

District organization.--The school district organization appears to be the result of the fulfillment of the desires and needs of the various school communities of the state. Common school districts are administered by three district board members under the general supervision of the county board of education and the county superintendent. Such common school districts as meet certain general population and territorial requirements become eligible to vote for incorporation as independent school districts. These independent districts are now administered by a board of seven members. Independent districts having fewer than 150 scholastics are governed by general laws and by the same laws that relate to common school districts. Larger independent districts are governed by general law and laws that relate to inde-

pendent districts. Incorporated towns and cities desiring to assume control of their schools have been permitted to do so. They were originally administered by the governing body of the municipality. Later the legislature endeavored to divorce the schools from municipal control by passing laws permitting organization of separate boards in districts already established and requiring a separate board for subsequently organized districts. All of these districts are governed by general laws and laws relating specifically to this type of district.

Probably in an effort to encourage the reduction of the number of organizational units, the legislature provided for the consolidation of districts. When two independent districts or one independent and one common school districts are consolidated, they are identified as a consolidated independent school district and are governed by laws relating to independent districts. When two common school districts are consolidated, the resulting unit is identified as a consolidated common school district and is governed by laws relating to common schools. These districts are administered by a seven-member board irrespective of the type of laws governing them.

County boards of trustees are empowered to create a district from territory located in two or more counties. Such a district is identified as a county-line district, and is subject to the laws relating to common schools. However, it may, under certain conditions, by vote of the people become incorporated as a county line independent school district and operate under relevant laws.

By grouping and annexing several school districts a county board may create a rural high school district. If an independent district is involved the enlarged district assumes the status of

an independent rural high school district; otherwise, it is considered a common rural high school district.

Support of the Public Schools

Sources of income.--There are seven general sources of revenue for the support of schools. They are: (1) income from the state permanent school fund; (2) income from the county permanent school fund; (3) one-fourth of the state's general revenue; (4) one dollar of the assessed poll tax; (5) a state ad valorem school tax; (6) legislative appropriations from the general fund; and (7) local school taxes. There are two special sources of income. They include funds granted by the federal government for specified purposes with legislative appropriations to match them, and appropriations by the legislature to the equalization fund. Income from the state permanent school fund, one-fourth of the general revenue, the poll tax, and the state ad valorem tax are denominated the state available school fund, and is distributed on a per capita basis. Should the state available school fund be insufficient to maintain schools for a period of six months, the constitution requires that the legislature through appropriation make up the deficit. Income from local taxation is designed to be used, primarily, for longer school terms, improved programs of instruction, maintenance of buildings, and transportation.

There are two provisions concerning the support of schools that have been common to all Texas constitutions; namely grants of land and taxation. The first grants of land were made to the several counties with the provision that the land was not to be alienated in fee, but it could be rented. Probably because of the meager income received from rentals, laws were eventually enacted

permitting the sale of county school land. The money so received was invested in bonds and has been indentified as the county permanent school fund. The interest from the bonds and the income from the rental of land becomes the county available school fund which is distributed annually to all schools within each county, irrespective of the type of school, on a per capita basis. The investment of this fund is one of the few school duties retained by the commissioners' court after it had been replaced by the county school board. The legislature has made the county government responsible for the proper and prompt investment of these funds and the payment of necessary expense involved in selling school land.

State school funds.--Although the greater portion of the state permanent school fund has been derived from the sale of land, it was originally created by the allocation of one-tenth of the state's general revenue. This was soon supplemented by a portion of the funds received by the state from the federal government in the settlement of the Texas-New Mexico boundary dispute. More than half of the public domain has been allocated to this fund. Like the county school lands the state school lands may be sold or leased. Money from the sale of land, as well as from the sale of timber and from oil, gas, and mineral royalties, is invested by the State Board of Education in types of bonds specified by law. The interest from these investments, together with revenues from rentals, is placed in the state available school fund.

State taxes.--Even though provisions for taxation for the support of schools were present in all Texas constitutions, the levying of a state tax specifically for education did not appear permanently in the legal structure for the support of schools

until after about forty years of statehood. The "public free schools," as they were identified in the law, were not, in a true sense of the word, free. It was not until laws were enacted providing for state and local ad valorem taxes that the teaching of all subjects in the school became free.

The ad valorem tax was introduced during the few years following the constitution framed by the Unionists. Provisions for state and local ad valorem taxes were made and the payment of tuition became unnecessary except where communities desired school terms longer than four months. However, this forward stride was short-lived, for after the Constitution of 1876 there was a return to the practice of charging tuition for certain courses to supplement the meager state funds. About eight years later, the legislature provided again for state and local taxation on property for the support of education. In making these provisions the legislature made it unlawful to collect tuition from those taking courses stipulated by law. These courses appear to define a curriculum comparable to the present day elementary school. Since that time free educational opportunities have gradually increased as the support from taxation has increased.

A portion of the state's general revenue from taxation has always been allocated either to the permanent school fund or to the available school fund. At present this allocation amounts to one-fourth of the general revenue and is made to the available school fund. The poll tax, which originally was considered as part of the general revenue, is now considered separately. One dollar of this tax is allocated to the schools. In addition to these two sources, there are provisions for a state ad valorem tax. The amount of this tax may vary from year to year, but it cannot exceed thirty-five cents on each one hundred dollar valua-

tion. The amount of the tax to be levied is set by The Automatic Tax Board created by the legislature. The levy made by this board is determined by the amount necessary to operate the schools for a six-month minimum term. If the fractional amount of the general revenue, the poll tax, and the income from the state permanent school fund are insufficient to operate the school for the minimum term, then the Automatic Tax Board sets a levy at the maximum limit or at an amount sufficient to produce enough income to make up the deficit.

Legislative appropriations.--If, after the Automatic Tax Board levies the maximum constitutional rate, it is found that there is an insufficient amount to operate the schools for the minimum period, the constitution requires the legislature to make the necessary appropriations. However, the legislature is not restricted by the constitution from making other appropriations. In an effort to equalize educational opportunity somewhat, the legislature has created an equalization fund which is constituted entirely of appropriations. This fund is distributed on the basis of need, specifically for transportation, salary, and tuition aid. Without such aid many schools would be unable to maintain a term of longer than six months.

Additional legislative appropriations are made to match federal funds granted to the state for such services and offerings as vocational agriculture, homemaking, vocational rehabilitation, education for crippled children, trade and industrial education, and distributive education.

Local taxation.--The development of a policy of local taxation for the support of schools has been slow and somewhat erratic. While the belatedness of a general tax policy for the support of education cannot be fully attributed to the originally

inadequate laws and later the permissive laws, there is evidence to indicate that the concept of a land-endowed system might have been a retarding factor. Another factor that doubtless influenced the support derived from local taxation was the necessary favorable vote of two-thirds of the qualified voters. It was not until after the turn of the century that a simple majority of votes could carry a local tax election.

In preference to setting up a separate organization entirely, the legislature has required that the assessment for, and collection of, local taxes be performed, for the most part, by the existing tax organization. In providing for assessors, the legislature requires that the assessors for county taxes also assess for common school district taxes. In those cities having control over the schools the city assessor also assesses for school taxes. Rural high school districts and independent districts may select a special assessor and collector, or they may select the county assessor and collector. Generally, the assessor and collector of taxes is one and the same person. The selection of a special assessor also requires the selection of a board of equalization. The county board of equalization has jurisdiction over assessments made in common school districts and the city equalization body has jurisdiction in cities having control of their schools. All equalization boards function in a quasi-judicial capacity. Their decision in the absence of fraud or undue irregularity is regarded by the courts as conclusive.

The authority to levy local taxes is granted by a vote of the majority of the property-owning, resident, and otherwise qualifying voters of a school district. Specific or maximum levies may be voted. If a maximum rate is set at an election, the levying body may levy any rate up to the maximum even though it may

be shown that the amount of money produced is more than sufficient to operate and maintain the school.

The levying body varies with each type of district. In common school districts taxes are levied by the commissioners' court, in independent districts by the district trustees, in independent districts in towns and cities by the city's governing body, the council or board of aldermen. This authority on the part of the city's governing body has been held as being purely perfunctory, in that it must levy the tax rate recommended by the school trustees.

Irregularities at tax elections, as in the case of other elections, are weighed by the court on the principle of adequate and unrestrained expression of the voters.

Specific tax levies authorized by an election cannot be revoked or altered by a subsequent election within two years. Levies made under a maximum authorization cannot be changed within one year.

In legal proceedings for the collection of taxes it is the responsibility of the school district to show that the taxes have been properly assessed and levied and that the property in concern is located within the district. The defendant who claims that an assessment is excessive must show that it unquestionably violates the principles of uniformity and fairness. When a taxpayer is successful in proving a violation of these provisions he is required only to pay taxes on the basis of his rendition without penalty or interest.

Bonds.--The practice of levying taxes to produce revenue for the construction of buildings developed at about the same time and in about the same manner as local taxation for maintenance and operation. A maximum tax limit of fifty cents on each

one hundred dollar valuation has been set by the legislature for the purpose of buying sites, constructing, and equipping school buildings and teacherages. A levy not exceeding this amount must produce sufficient revenue to pay interest and establish a sinking fund that will redeem bonds at maturity. The term for which bonds may be floated is dependent upon the type of material used in constructing buildings. Among other things, the statutes require that the rate of interest be included in the order and in the notice of election. However, it has been held that a statement in an election order and public notice to the effect that the proposed bonds would bear an interest rate within the limits of the law would not alter the election results or affect the validity of the bonds. Likewise, the validity of bonds is not affected if the rate of interest at which bonds are issued is lower than that stipulated in the election order and notice.

Should it be discovered, after a bond issue has been voted, that the property valuations are insufficient to produce the necessary revenue to pay interest on and redeem the bonds, the courts have held that that amount of bonds which can be negotiated on the corrected valuation may be issued.

Before bonds may be sold there are two procedures necessary. The Attorney General must examine them to see that they conform in all respects to the law. After bids have been received on the bonds it is necessary that the State Board of Education be notified of all bids and be given a ten-day option on them. If the state board decides to buy them with cash from the state permanent school fund it must pay the same price as offered by the highest bidder. The statutes prohibit the state board from buying them if they produce less than two and one-half per cent interest. After bonds have been sold there can be no revo-

cation.

Depositories.---The amount of discretion that may be exercised by a district board in the matter of selecting a depository is limited by the mandatory provisions of the statutes and a strict interpretation of these statutes by the courts. Independent districts having fewer than 150 scholastics and common school districts are required to use the same depository as is used by the county. An independent district in a town or city is required to use the depository selected for use by the city. Independent districts having more than 150 scholastics may select their own depositories. The selection of a depository is determined by the person or firm offering the required bond and the best bid of interest. The best bid of interest may not necessarily be the highest bid. The determination of the best bid is probably the only important discretionary feature in these laws. Only proof of abuse of this discretion will warrant interference by the courts.

Depositories are required to give a personal bond in an amount equal to the total annual receipts, or a commercial bond in an amount equal to the highest probable daily balance, for the two years for which they are selected. The courts will not hold a bond void merely because it has not conformed to applicable legal requirements. The law is, in fact, "read into" the bond, and those parts not included in the law are "read out."

A depository is selected for a two-year term, or longer, until a successor has been properly selected and has qualified. Should a school board, at the expiration of two years, fail to select a successor, such failure does not relieve a surety of its liability in case the depository became bankrupt.

Application of public funds.---The expenditure of public

funds is closely guarded by the provisions of the legislature as well as by the decisions of the courts. Yet the laws permit some exercise of discretion on the part of local boards in determining for what purposes funds may be expended. The amount of discretion that may be exercised is determined by the amount of money collected from local sources in excess of the amount necessary to operate and maintain the school for a term of eight months.

Money from the state available fund may be expended only for salaries of teachers and administrators, fees for taking the scholastic census, and interest on short-term loans made for the purpose of paying salaries. Local funds may be expended for the same operating items for which the state available funds may be spent and for other purposes, as the purchase of appliances and supplies, insurance premiums, salaries for janitors and other employees, renting, buying, constructing, and repairing school buildings, and such other purposes as are necessary in conducting the school. Discretion has not been abused when a school board has spent local funds for the maintenance of school cafeterias and health departments, for medical inspection, and for the employment of an attorney to protect a school's interests. When a board wilfully and deliberately misappropriates funds its members may be held personally liable.

School Property

Acquisition.--The acquisition of school buildings has always been dependent on the initiative and resources of each local school community. Originally, it was a responsibility of the patrons of each school whose donations of land, materials, funds, and labor were required for the construction of a school house. State funds were, during these first few years, used

exclusively for the payment of teachers' salaries. After a few years of this procedure, the legislature sought to encourage the building of school houses by allotting a portion of the state funds to their construction. The laws required that the patrons contribute approximately one-half of the total cost; later, they were to contribute approximately one-third. This practice was retained until after the turn of the century. In 1884, the legislature made permanent provisions for an alternate plan. Local taxation for the construction or purchase of buildings was permitted. Under the Constitution of 1869, such provisions had been made but had been abolished after a few years. The latter provision for local taxation required a two-thirds majority vote. Thus, when tax elections failed to carry, the alternate plan of state supplemented donation could be adopted.

The laws concerning the officials in whom, or bodies in which, titles were vested have been relatively unstable. They have been vested in the county boards, county judges, city officials, city governing bodies, and local boards. At present the titles are vested in either the county boards or local school boards. In taking land for school purposes officials have been empowered to take the fee estate in land or any interest less than fee. In conveying land to a school board the recital must be indisputably clear before the courts will declare a reversion. A mere declaration that the property is to be used "for school purposes only" will not necessarily imply a forfeiture when the property is abandoned for school purposes. Even though a recital may be clear in a conditional grant, there can be no reversion where the heir of a deceased grantor was not named in the grant.

The power to purchase land for school purposes has recently been augmented by the right of eminent domain. Both

personal and real property may be condemned for any purpose that may be necessary to conduct schools. In condemnation procedures the fee of the land may be taken.

Construction of school buildings.--The authority to select sites for school buildings was for a while exclusively in the hands of the patrons. However, it is now a power of the local board and is exclusive in the absence of fraud or abuse of discretion. It has also been held that commitments made by a board or any of its members regarding a school site before an election are not binding. A local board's power in the matter of constructing a building is limited only by a few requirements. For buildings costing more than \$400 it is necessary to obtain a certificate from the county superintendent or the district school superintendent certifying that the plans of a proposed building conform to statutory specifications. These specifications concern lighting, heating, ventilation, sanitation, and fire protection. The failure to secure such a certificate will render a contract for construction void; and a disbursing official who pays for services under such a contract is liable.

There seems to be no requirement for a local board to advertise for bids for the construction of school buildings. The power to contract for construction of buildings carries with it the power to engage architects to design and supervise the construction. However, a contract with an architect made prior to the sale of bonds is regarded as void.

A contractor is required to execute a performance bond. In addition to the guarantee of faithful performance of his work, the contractor agrees that he will promptly pay all laborers and material men. This part of the agreement is reinforced by the provisions permitting material men and laborers to acquire liens

on funds that may be due a contractor. No lien may be acquired on a school by anyone.

Use and conveyance of school property.--The legislature has made the county and local school boards custodians of school property. This custodianship appears to be exclusive, for the courts have refused to interfere with boards who have permitted the use of their buildings by clubs, societies, musical organizations, and church groups, when it is shown that such use does not interfere with the operation of the school. A request to use a school building to hold an election may be refused by a board despite the fact that the statutes require elections to be held in public buildings wherever possible. Even though a school house may be the only public building within a precinct and even though some of the elections would be held on Saturdays do not alter the court's opinion regarding the exclusiveness of a board's power.

In order to convey school property in common school districts it is necessary for the local board to secure permission from the county board of trustees. In independent districts approval must be secured from the State Board of Education. The approval of these two boards is regarded as directory, inasmuch as they may pass a resolution approving a sale after a conveyance had been made. Funds derived from the sale of school property may be placed in the available school fund and expended for repair of remaining buildings or may be used to purchase additional property.

Teacher Personnel

Selection and certification.--There are two significant limitations to a local board's power to select teachers. They

are the prohibition of inquiring into an applicant's religious affiliation and the requirement of an applicant to have a valid certificate. Every constitution adopted by the state has contained a clause prohibiting the inquiry into a public employee's religious affiliation. The statutes have made this provision specifically apply to teachers as well as to other public officials and employees. In order for a teacher to be selected he must not only have a certificate at the time a contract is entered into, but such certificate must be valid for the term of the contract.

The history of certification practices reveal, probably more than any other phase of organization and administration, a gravitation of power to the state. Originally, certificates were issued by the county's political governing body. Later they were issued by a board of examiners composed of teachers in each county, the members of which were appointed by the chief county educational officer. Finally, they are issued by a state board of examiners. At present the only function of a county board of examiners is merely to administer examinations for the lowest and only class of certificates that can be secured through examination.

An applicant for a certificate must be eighteen years of age and of "good moral character." He must be a citizen of the United States or have evidence of intention of becoming a citizen. He must indicate that he will defend the Constitution of the United States and of the State of Texas.

The legislature has consistently provided that the authority issuing certificates may also revoke them for sufficient cause. The statutes have specifically provided for the revocation of certificates of teachers conducting school in violation

of the law, of teachers abandoning their contracts without good cause, or teachers unworthy to instruct children, and of teachers refusing to attend institutes. Before a certificate may be revoked it is necessary that the teacher in question be notified and be given an opportunity to be heard.

Teachers' contracts.---The statutes include so many stipulations regarding contracts with teachers that it might be said that such a duty performed by a board is largely ministerial. The law requires that contracts be reduced to writing and that they must specify the salary agreed upon and the length of the school term. The Penal Code makes it a misdemeanor to a board to approve a contract with a teacher who does not hold a valid certificate. Should one teach without a valid certificate there can be no recovery for services rendered. Boards may contract with teachers only when there are sufficient funds to pay the salaries agreed upon. Since there can be no recovery on such contracts it becomes a responsibility of teachers to know of the financial status of the school district in which they plan to teach. School districts having a scholastic population of five thousand or more may contract with teachers for a period of five years. Smaller districts may contract with teachers for three years. The law makes it necessary for the county superintendent to approve all contracts made with teachers of common school districts and independent districts having a scholastic population of fewer than 150 scholastics. No recovery may be had for services rendered under a contract not properly approved. Contracts made by the officers of a board may later be ratified by the board at a formal meeting. In one case the court has held that the action of a majority of the board members of a common school district at a meeting about which all members were not notified was binding.

The consolidation of districts does not relieve a board of its contractual obligation.

Dismissal of teachers.--Causes for which teachers may be dismissed are so general in their nature that it can almost be said that a teacher serves at the pleasure of the board. Among the enumerated causes in the statutes are immorality, insubordination, incompetency, misconduct in office, wilful neglect of duty, or whenever, in the board's opinion, the best interest of the school requires it. There seems to be no obligation on the part of a local board to give a dismissed teacher a hearing, but the statutes do provide for appeal to higher school authorities. If it can be shown that the board has acted contrary to express statutes, appeal may be made directly to the courts. Appeal to either tribunal must be made without undue delay. If a teacher is wrongfully dismissed he may recover his salary in full or receive mitigated damages.

Teachers' salaries.--Salaries of teachers are for the most part regulated by local boards. The statutory limitations apply only to districts which do not levy a school tax.

Teacher retirement system.--In 1937 the legislature created the teacher retirement system in an effort to offer a degree of financial security to teachers who have attained the age of sixty and have taught in the public schools of the state for at least twenty years. Benefits for disability are paid after twenty years of service irrespective of the age of the teacher. Teachers are required to contribute five per cent of salaries earned. Their contributions are not to exceed \$180 per year. The legislature matches this amount and in addition gives credit for the years of service rendered prior to the enactment of the law.

The system is administered by a board of trustees composed

of two state officials, an appointee by the State Board of Education, and three teachers. Except for the appointee of one member by the State Board of Education the retirement system board appears to be independent of control by other state agencies.

Legal Provisions for the Pupil Personnel

The right and obligation to attend school.--The opportunity has been made possible for all youth between six and twenty-one years of age to attend school without the payment of tuition, but there is little legal obligation for them to attend. Because of their lack of enforcement instruments and their permissive nature, compulsory attendance laws can hardly be considered as adequate. Only counties having a scholastic population of three thousand and independent districts having a scholastic population of two thousand may have a compulsory attendance officer. Counties and districts not qualifying, and those not choosing to have such an officer, must depend on the school superintendent or peace officers to enforce the attendance laws without extra compensation. Only about one-third of the 108 qualifying districts have a special attendance officer. Such a small number is not surprising when it is noted that the per diem salary for such an officer is \$2.00. Probably the most fundamental factor relating to compulsory attendance is the basis on which the state funds are distributed. The distribution of the greater portion of funds on the basis of the scholastic census places a premium on inattendance, since there will be the same amount of money for a fewer number of pupils.

After ninety years the lawmakers and taxpayers have developed a system of public free schools for the youth of the state. The first provision to make education free was for

children of indigent parents. Next, education became free for all those within the scholastic age limits. For a while these limits covered only about six years of a child's life. These limits were expanded and later provision was made for those within the scholastic age limits in a district without a high school to be transferred to a district with a high school. In such instances the expenses were borne by the sending district. At present this practice continues and state aid is given when needed to pay the tuition of out-of-district pupils. In addition to this, the law provides that all youth between six and twenty-one may attend school in their resident districts without payment of tuition.

Transportation.--In the process of establishing free schools the legislature has provided for transportation of children whose residences are remote from schools. The expense of such service is borne in part by the state through the equalization fund. Drivers of school buses are required to meet certain requirements, among which is the making of a performance bond. Hence, drivers, rather than school boards, are held liable for accidents caused by negligence. In fact, a school board is not held liable for an accident occurring as a result of the disrepair of a bus that belonged to a school district.

Rules, regulations, and punishment.--School boards may make such rules and regulations regarding the control of pupils as they may deem wise. The courts will not question the discretion of a board in the making or enforcement of rules where there is no evidence that this power has been abused. Rules which have been questioned before the courts and have been sustained by them have involved the requirement of small pox vaccination, remaining on the school ground all day, requiring home work, and fighting

on the way home from school. Teachers may exercise moderate restraint in the effort to enforce the rules and regulations of the board. Moderation in corporal punishment is exceeded when there is evidence of bruises, swelling or contusion on a normal, healthy, properly-dressed child. Exceeding moderation, as well as evidence of malice, warrants a charge of assault against a teacher. The courts have defined a teacher as one who teaches and have held that a superintendent has no authority to render corporal punishment. One who does so is liable for assault. Violation of a rule may warrant expulsion, provided such expulsion does not extend beyond the current year.

Race segregation.--The constitution and statutes require the segregation of negroes, but the arbitrary segregation of Mexican children is not permissible. Under the Fourteenth Amendment substantially equal educational opportunity must be afforded colored children when taught in separate schools. The courts have held that school boards may segregate children of Mexican descent where it appears that they would otherwise be handicapped because of lingual difficulties.

Summary of Trends

In this analytical study of the development of the school system of Texas there have appeared several significant trends that warrant attention, some of which have been noted earlier in this chapter, others of which have been implied.

1. The personnel of the agencies of control in the state school system has changed from ex officio officials to individuals who hold no other public office. Such state officers as the Governor, Attorney General, Treasurer, and Comptroller, and such county officials as members of the Commissioners' Court and the

County Judge, and such city officials as the Mayor and members of the City Council or Aldermen, have been replaced by individuals who hold no other public position.

2. As the functions of the school have increased, the powers and authority of the agencies of control have increased. As the state school system expanded and became more and more complex, the legislature became obligated to confer on the agencies of control the necessary power and authority to discharge the increasing number of duties imposed.

3. There has been a trend toward centralization of power in the state officials. This is particularly true in respect to such matters as certification of teachers, approval of expenditures, approval of school building plans and specifications, classification and accreditation of schools, determining the subjects to be taught, settling disputes arising between subordinate officials, and making rules and regulations in the absence of law. These powers were, during the first several decades, either not conferred on anyone or were conferred on a subordinate body or officer. Now they are powers of the state officials.

4. The basis of support has broadened and has approached some degree of equalization. From a concept of a land-endowed system, the funds from which were distributed on a per capita basis, there has evolved a concept of supporting education by taxation--the funds from which are distributed both on a per capita basis and on a basis of need.

5. Educational opportunity has gradually increased in respect to curriculum offerings, accessibility to schools, the age limits during which one might attend, the length of the school term, and the number of grades taught.

6. The status of the teacher has become more professional.

From the status of being merely a suitable person without specific training and without security, he has evolved to the status of a person holding a certificate which requires a specific type of training and to whom retirement privileges are available.

7. A limited opportunity to attend school has evolved into a right and obligation to attend. The obligation to attend arose upon the appearance of compulsory school laws. It may be pointed out, however, that the enforcement instruments of these laws have been inadequate.

